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a Social Movement Commentary: Critical Race Theory: A
Commemoration: Response**

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“Constituted by a Series of Contestations”: Critical Race Theory as a Social Movement

GEORGE LIPSITZ

The ideas, insights, and analyses that define the Critical Race Theory (CRT) project have made critical contributions to scholarship in law and many other disciplines. Yet CRT has never been merely a project of intellectual engagement and argument. The movement emerged from and contributed to the Black freedom struggle of the twentieth century. It drew many of its determinate features from lessons learned through political engagement and struggle. The occluded history of CRT speaks powerfully to the problems we face in the present as a result of our society's continuing failure to recognize the role that racism plays in preserving unjust hierarchies, misallocating resources and responsibilities, and channeling unfair gains and unjust enrichments to dominant groups. The social movement history of CRT provides us with a richly generative example how people can create a parallel institution that helps aggrieved individuals and groups participate in struggles for power, resources, rights, and recognition.



“Constituted by a Series of Contestations”: Critical Race Theory as a Social Movement

GEORGE LIPSITZ*

“Of course it is difficult to maintain the faith and keep working toward the new time if you’ve had no *experience* of it, not *seen* ordinary people actually transform selves and societies.”¹

“Social movements generate new knowledge, new theories, new questions. The most radical ideas often grow out of a concrete intellectual engagement with the problems of aggrieved populations confronting systems of oppression.”²

In *Twenty Years of Critical Race Theory: Looking Backward To Move Forward*, Kimberlé Crenshaw asks us to think about Critical Race Theory (CRT) not simply as “an intellectual unit filled with natural stuff—theories, themes, practices, and the like—but one that is dynamically constituted by a series of contestations and convergences pertaining to the ways that racial power is understood and articulated in the post-civil rights era.”³ First and foremost among those contestations and convergences is the relationship between CRT and the shakeup in social life brought about by the Black freedom struggle and other democratic and egalitarian social movements in the mid-twentieth century.⁴ At first glance, the law school classrooms and legal journals where the key ideas and arguments of critical race theorists have been articulated and elaborated might seem far removed from the environments where the Black freedom struggle was first envisioned and implemented, far removed from the city streets, sharecroppers’ cabins, church meeting rooms, and

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¹ Toni Cade Bambara, *What It Is I Think I’m Doing Anyhow*, in *THE WRITER ON HER WORK* 153, 161 (Janet Sternberg ed., 1980).

² ROBIN D.G. KELLEY, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* 9 (2002).

³ Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Backward To Move Forward*, 43 *CONN. L. REV.* 1253, 1261 (2011).

⁴ See *id.* at 1259 (describing how the growth of CRT was fostered by the “particular institutional and discursive struggles over the scope of race and racism in the 1980s”).

back rooms of Black-owned businesses where deliberative talk and face-to-face decision making turned the alienations and indignities of everyday life into collective mobilization by an aggrieved and insurgent people.⁵ Yet agitation and mobilization by cross-class and cross-race coalitions in support of the self-activity of the rural and urban poor had ripple effects in many other sectors of society. As Robin Kelley explains, struggles for social justice are contagious: They show people that change is possible, that the way things are is not the way they have to be.⁶ People struggling for freedom for themselves often set in motion processes and practices that help free others. The emergence of CRT offers a powerful example of that dynamic.

The history that Crenshaw traces in this volume, however, shows that the emergence of CRT was not merely a matter of a revolution of rising expectations provoked by the prospect of change from the bottom up. In important ways, CRT derived its specific formative critiques, determinate practices, and democratic impulses from the broader social movement to which it both responded and contributed.⁷ Scholars skilled at studying ideas, evidence, arguments, and opinions are often unable to recognize the role that action plays in intellectual life. The separation of written texts from their original social and historical contexts is an effect of power, a practice that prevents us from understanding that ideas have causes and consequences, that they function as nodes inside integrated networks of knowledge and power. In the mid-twentieth century, grassroots challenges to hierarchical power and expert authority originating in the Black freedom struggle exposed the inadequacies and undermined the ideological legitimacy of many elite institutions, including the law and legal education.⁸ Mobilizations for civil rights and Black power offered alternative models of identity and organization based on appealing principles of participatory democracy, radical solidarity, and a dialectical interplay of individual and collective transformation.⁹ CRT activists

⁵ See, e.g., Jay Alan Sekulow & Erik M. Zimmerman, *Weeding Them Out by the Roots: The Unconstitutionality of Regulating Grassroots Issue Advocacy*, 19 STAN. L. & POL'Y REV. 164, 178 (2008) (noting that grassroots movements played a significant role in the Civil Rights Movement).

⁶ See KELLEY, *supra* note 2, at 9 ("Progressive social movements do not simply produce statistics and narratives of oppression We must remember that the conditions and the very existence of social movements enable participants to imagine something different, to realize that things need not always be this way.").

⁷ See Crenshaw, *supra* note 3, at 1277 (describing how the politics and conditions that existed when CRT was emerging may not have been evident to those who were engaged in the movement).

⁸ See, e.g., *id.* at 1306 & n.170 (citing Evelyn Hu-DeHart, *The History, Development, and Future of Ethnic Studies*, 75 PHI DELTA KAPPAN 50, 50 (1993)) (describing the active challenge by American college students to predominantly white institutional administrations and faculties in which the students demanded fundamental changes to higher education).

⁹ See KWAME TURE & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* 44 (Vintage ed., 1992) ("The concept of Black Power . . . is a call for black people in this country to unite, to recognize their heritage, to build a sense of community. It is a call for black people

changed themselves in the process of changing society. The practical activities of struggle compelled them to create cooperative relationships that contrasted sharply with the competitive professionalism and possessive individualism that legal education demanded of them. Perhaps most importantly, the social movements that shaped CRT revolved around efforts to build new democratic institutions and practices, to change the society in fundamental ways, not merely (as Vincent Harding astutely phrased it) to desegregate or to gain equal opportunity with “the pain inflictors of this nation and this world.”¹⁰ Although often deliberately misremembered and mischaracterized in retrospective historical accounts as merely a parochial and reformist effort to remove negative racist obstacles to Black assimilation and incorporation into white society,¹¹ the Black freedom struggle produced profound and powerful critiques of dominant institutions. As Martin Luther King, Jr. argued,

the black revolution is much more than a struggle for the rights of Negroes. It is forcing America to face all its interrelated flaws—racism, poverty, militarism and materialism. It is exposing evils that are rooted deeply in the whole structure of our society. It reveals systemic rather than superficial flaws and suggests that radical reconstruction of society itself is the real issue to be faced.¹²

Yet this commitment to radical democracy promoted by the Black freedom struggle was a product of struggle, not a precondition for it. Black people walking to work in Montgomery, Alabama in 1955 and 1956 rather than riding segregated buses were probably not thinking of their boycott as a step toward the radical democratization of U.S. society.¹³ Four college students ordering coffee at a Woolworth’s lunch counter in Greensboro, North Carolina in 1960 probably did not imagine that their failure to be served would provoke a wave of sit-ins and freedom rides all across the South and lead to the formation of the Student Nonviolent

to begin to define their own goals, to lead their own organizations and to support those organizations. It is a call to reject the racist institutions and values of this society.”).

¹⁰ Vincent Harding, *Responsibilities of the Black Scholar to the Community*, in *THE STATE OF AFRO-AMERICAN HISTORY: PAST, PRESENT, AND FUTURE* 277, 281 (Darlene Clark Hine ed., 1986); see also TURE & HAMILTON, *supra* note 9, at 40 (asserting that “[t]he goal of black people should not be to assimilate into middle-class America”).

¹¹ See generally PAUL SNIDERMAN & THOMAS PIAZZA, *THE SCAR OF RACE* (1995); ABIGAIL THERNSTORM & STEPHEN THERNSTROM, *AMERICA IN BLACK AND WHITE* (1999).

¹² Martin Luther King, Jr., *A Testament of Hope*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 313, 315 (James M. Washington ed., 1986).

¹³ Aldon D. Morris, *A Retrospective on the Civil Rights Movement: Political and Intellectual Landmarks*, 25 ANN. REV. SOC. 517, 524–25 (1999) (describing how the Montgomery bus boycott involved large numbers of Black protesters and led to the Montgomery Improvement Association (MIA), an organization of direct action protests).

Coordinating Committee ("SNCC").¹⁴ Forty-four year old plantation timekeeper Fannie Lou Hamer seeking to register to vote in Ruleville, Mississippi in 1962 probably did not suspect that in a mere two years that her nationally televised testimony from the Democratic Party's national convention would shame the President of the United States and mobilize anti-racist activism all across the nation and around the world.¹⁵ In each of these instances, direct action set in motion a process of learning from events, revising goals to adjust to new circumstances and expanding the horizons of struggle.

Sociologists call this process "organizational learning."¹⁶ They emphasize that for social movements, even defeats and disappointments can be very productive because they compel participants to assess the weaknesses in their existing analyses and programs in order to work more effectively.¹⁷ The boycotters in Montgomery did not start out demanding an end to segregation on the buses.¹⁸ They protested the arrest and humiliating treatment accorded Rosa Parks for refusing to give up her seat to a white passenger and move to the back of the bus.¹⁹ Initially, they sought only a more humane form of segregation.²⁰ When the city resisted their demands, however, making it clear that no concessions would be forthcoming, discussions at mass meetings made the Black population of Montgomery more aware of its linked fate and more enthusiastic about the prospect for broader changes.²¹ The lunch counter sit-ins by students began with the modest goal of seeking the right to eat a hamburger next to a white person.²² But the disciplined collective action required to mount and sustain struggle in the face of vigilante violence, arrests, and

¹⁴ Matthew E.K. Hall, *Bringing Down Brown: Super Precedents, Myths of Rediscovery, and the Retroactive Canonization of Brown v. Board of Education*, 18 J.L. & POL'Y 655, 682 (2010) (discussing how the Greensboro incident spread to other states and resulted in the formation of the SNCC).

¹⁵ Fannie Lou Hamer, Testimony Before the Credentials Committee, Democratic National Convention (Aug. 22, 1964), available at <http://americanradioworks.publicradio.org/features/sayitplain/flhamer.html> (providing a transcript of Hamer's testimony at the Convention about her experience of trying to register to vote).

¹⁶ Sim B. Sitkin, *Learning Through Failure: The Strategy of Small Losses*, in ORGANIZATIONAL LEARNING 541, 542 (Michael D. Cohen & Lee S. Sproull eds., 1996).

¹⁷ *Id.* at 542, 547.

¹⁸ Randall Kennedy, *Martin Luther King's Constitution: A Legal History of the Montgomery Bus Boycott*, 98 YALE L.J. 999, 1003 (1989) ("King and the MIA did not initially demand the abolition of *de jure* segregation on Montgomery's buses; they primarily demanded courtesy and formal even-handedness, taking for granted the continued existence of racial separation.").

¹⁹ *Id.* at 1019–20 (stating that the boycott was initially planned to last one day in response to Rosa Parks's trial).

²⁰ *Id.* at 1003.

²¹ *Id.* at 1026 (discussing how the bus company's hard-line stance forced the protesters to radicalize and challenge the system of segregation itself).

²² See HOWELL RAINES, MY SOUL IS RESTED: MOVEMENT DAYS IN THE DEEP SOUTH REMEMBERED 75–76 (1977) (describing the initial plan of the students that participated in the lunch counter sit-ins in Greensboro, North Carolina).

incarceration led to the organization of SNCC and the recognition by Ella Baker and others that the struggle had become concerned with something “bigger than a hamburger.”²³ Hamer was initially unenthusiastic about registering to vote because she felt that the things she had been taught about democracy in school were simply a sham, but she agreed to try to register as a favor to a friend.²⁴ Only when she witnessed resistance against her group’s efforts to register did she become determined to succeed.²⁵ The plantation owner who was her boss told her that he was disappointed in her, that he had not wanted her to go down to the courthouse and register.²⁶ In an emblematic moment, Hamer told him that she did not do it for him, she did it for herself.²⁷ From that point on, her commitment to the movement was firmly established.

Organizational learning not only produces new perspectives, but also new people. The practical activities of social movements require participants to turn complaints into causes and causes into critiques. Critical thinkers learn to recognize that what they previously viewed as the sole source of their problems may actually be merely a symptom of bigger problems. Collective mobilization requires renegotiation of relationships between individuals and groups. It promotes new ideas and new identities. Social movements devise transitional demands dramatized by creative tactics that produce transformative experiences. Activists come to see that contestation requires subtlety and skill. They need to rock the boat but not tip it over. Their enemies must be powerful enough to afford to make concessions, but not so powerful that they are immune to pressure. Activists have to identify enemies and embarrass them, but not vilify them so thoroughly that a negotiated settlement will be impossible. Successful social movements give participants psychic rewards by enacting in everyday practice some of the experiences denied to people in the rest of their lives. As Robin Kelley explains, “[p]rogressive social movements do not simply produce statistics and narratives of oppression; rather, the best ones do what great poetry always does: transport us to another place, compel us to relive horrors and, more importantly, enable us to imagine a new society.”²⁸

The organizational learning that took place in Montgomery, Greensboro, and Ruleville all entailed an escalation and deepening of

²³ Ella Baker, *Bigger Than a Hamburger*, THE SOUTHERN PATRIOT, May 1960, available at <http://www.crmvet.org/docs/sncc2.htm>.

²⁴ CHANA KAI LEE, FOR FREEDOM’S SAKE: THE LIFE OF FANNIE LOU HAMER 24 (2000).

²⁵ See RAINES, *supra* note 22, at 250–51 (describing how the bus driver taking Hamer and others to Ruleville to register to vote was pulled over by a highway patrolman and fined for driving a bus with too much yellow in it).

²⁶ *Id.* at 251 (stating that Hamer’s boss told her that if she did not withdraw her registration, she would lose her job and have to leave the plantation).

²⁷ *Id.*

²⁸ KELLEY, *supra* note 2, at 9.

commitment as a result of the repression, shared risk, and the resolve that comes out of collective and disciplined struggle. As W.E.B. Du Bois said about the struggles by newly freed slaves that produced the Thirteenth, Fourteenth, and Fifteenth Amendments in the wake of the Civil War, it was not the ideology that made the revolution, but rather the revolution that made the ideology.²⁹ The seemingly roundabout road to radical democracy traveled by the movement was not a matter of choice. It came about because people can fight only in the arenas open to them with the tools they have. The terrible lack of democracy in the United States hides the workings of power, denies people the power to make the most important decisions about their lives, and inculcates passivity in the populace. People without wealth have little influence on the political system.³⁰ The protections for expressive freedom and the guarantees of due process in the Bill of Rights do not apply meaningfully to the workplace.³¹ In every realm of life—from education to the environment, from foreign policy to urban planning, from the health care system to the criminal justice system—power operates almost entirely unimpeded by democratic debate and decision-making. Drawing on examples from diverse sources in previous eras like the shop floor democracy of the Congress of Industrial Organizations (“CIO”) in the 1930s³² and the self-activity of the Union and Loyalty Leagues during Reconstruction,³³ the democratic and egalitarian movements of the mid-twentieth century launched what German activist Rudi Dutschke (drawing on the writings of Antonio Gramsci) describes as the “long march through the institutions.”³⁴ Because power cannot be confronted immediately at the level of the state, social movements expand the sphere of politics by raising demands about power in sites where their status as students, workers, consumers, and neighbors seem to offer them resources for contestation unavailable to them simply as citizens.

The idea of the long march through the institutions relies on Gramsci’s

²⁹ See generally W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA, 1860–1880*, at 84–127 (First Free Press 1998).

³⁰ See, e.g., Andrew C. Geddis, *Democratic Visions and Third-Party Independent Expenditures: A Comparative View*, 9 TUL. J. INT’L & COMP. L. 5, 6 (2001) (noting the concern over “potential imbalances that may be created as a result of the unequal share of wealth held by the participants in a presumptively egalitarian system of governance”).

³¹ See, e.g., John Q. Mulligan, Huppert, Reilly, and the *Increasing Futility of Relying on the First Amendment to Protect Employee Speech*, 19 WM. & MARY BILL RTS. J. 449, 462 (2010) (acknowledging the lack of First Amendment protections offered to private employees).

³² See, e.g., Robert M. Cohan, *Of Politics, Pipefitters, and Section 610: Union Political Contributions in Modern Context*, 51 TEX. L. REV. 936, 938 (1973) (discussing the gains made by the Democratic Party during the New Deal era as a result of the “urban based and largely unskilled constituency of the CIO”).

³³ See, e.g., CLYDE WOODS, *DEVELOPMENT ARRESTED* 67–68 (1999).

³⁴ The phrase “long march” evokes the history of the Chinese Revolution and the role of the Yanan period in giving the Chinese Communist Party a new perspective on the revolutionary potential of peasants. See generally Rudi Dutschke, *On Anti-Authoritarianism*, in THE NEW LEFT READER 247 (Carl Oglesby ed., 1969).

distinction between the war of maneuver, which is the struggle for state power, and the war of position, which is the struggle for ideological legitimacy and hegemony.³⁵ Although still committed to the Leninist idea of a vanguard party seizing state power, Gramsci recognized that the power of the repressive apparatuses of the state (the army, the police, the prison) generally made immediate revolution impractical.³⁶ Moreover, the hegemony of the ruling class is not only secured by force, but also by the power of dominant ideas and images to shape popular aspirations and imaginations.³⁷ Maintaining power by placing a police officer on every corner would be expensive and ineffective, but placing a metaphorical police officer inside the mind of every worker is both cost effective and efficient. Bourgeois institutions produce bourgeois ideas and personalities. They nurture those aspects of our personalities best suited for fitting in and for resigning ourselves to unjust social relations. They make us passive, timid, and compliant. Political action is necessary not only for changing social structures, but also for helping people become the kinds of individuals capable of living differently. As Karl Marx argued in *The German Ideology*,

the alteration of men [sic] on a mass scale is necessary, an alteration which can only take place in a practical movement, a *revolution*; this revolution is necessary, therefore, not only because the *ruling* class cannot be overthrown in any other way, but also because the class *overthrowing* it can only in a revolution succeed in ridding itself of all the muck of ages and become fitted to found society anew.³⁸

The long march through the institutions seeks to make people “fit to found society anew.”³⁹ Because schools, churches, and expressive culture function as sites where ruling ideas are articulated and legitimated, power is maintained not only by force but a long chain of signs, symbols, and concepts. A long march through these institutions is the only way to expose, critique, delegitimize, and replace the old ideas with new ones. Yet the war of position is not merely a matter of taking positions. Changing minds is not the same as changing social structures. The long march is a pedagogical enterprise, but in order to succeed it needs to function as a form of action through practical political contestation.

A key mechanism of organizational learning developed by the Black

³⁵ ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 350–51 (Columbia University Press ed., 1971).

³⁶ MARTIN JAY, MARXISM AND TOTALITY 150–73 (Berkeley: Univ. of Cal. Press, 1986).

³⁷ Douglas Litowitz, *Gramsci, Hegemony, and the Law*, 2000 BYU L. REV. 515, 524–25.

³⁸ KARL MARX & FRIEDRICH ENGEL, THE GERMAN IDEOLOGY 94–95 (1970).

³⁹ *Id.* at 95.

freedom struggle's "long march"⁴⁰ was the parallel institution. The long march through the institutions produced few unequivocal victories, but it did succeed in carving away some small sites where meaningful oppositional work could be carried out.⁴¹ As civil rights activists gradually came to believe that white supremacy did its work not so much through prejudice as through the unequal distribution of power, they turned increasingly to the parallel institution as a key component of struggle. Rather than merely seeking the removal of negative racist obstacles in the way of equal opportunity, the movement began to pursue community control of the police, schools supervised by parents, businesses answerable to the investment needs of the Black community, and power over urban planning.⁴² Democracy could no longer be circumscribed as simply the right to vote in elections, but had to include meaningful participation in making all of the decisions that affected people's lives. As Kwame Ture and Charles Hamilton maintain in their classic 1967 book, *Black Power*, parallel community institutions would "for once, make decisions in the interest of black people."⁴³ The Mississippi Freedom Summer Project's citizenship schools,⁴⁴ Hamer's Freedom Farm and National Labor Union,⁴⁵ the Lowndes County Freedom Party,⁴⁶ the Black Panther Party's Serve the People Programs,⁴⁷ and Malcolm X's Organization of Afro-American Unity⁴⁸ were all examples of these parallel institutions that inspired and guided the development of the Alternative Course at Harvard and CRT itself.⁴⁹ Black people created parallel institutions in response to the crises and opportunities of the 1960s in part because their community had nurtured oppositional imaginaries, archives, epistemologies, and ontologies

⁴⁰ See *supra* text accompanying note 34.

⁴¹ CHARLES PAYNE, I'VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM MOVEMENT 317–37 (1995).

⁴² See generally PENIEL E. JOSEPH, WAITING 'TIL THE MIDNIGHT HOUR: A NARRATIVE HISTORY OF BLACK POWER IN AMERICA (1997); TURE & HAMILTON, *supra* note 9.

⁴³ TURE & HAMILTON, *supra* note 9, at 43.

⁴⁴ See DOUG MCADAM, FREEDOM SUMMER 4 (1988) (discussing the 1964 Mississippi Freedom Summer campaign, which was also known as the Summer Project at the time).

⁴⁵ See LEE, *supra* note 24, at 147 (discussing Fannie Lou Hamer's Freedom Farm).

⁴⁶ See Hasan Kwame Jeffries, *Organizing for More Than the Vote: The Political Radicalization of Local People in Lowndes County, Alabama, 1965–1966*, in GROUNDWORK: LOCAL BLACK FREEDOM MOVEMENTS IN AMERICA 140, 153 (Jeanne Theoharis & Komozi Woodard eds., 2005) (discussing the formation of the Lowndes County Freedom Organization).

⁴⁷ See Edward P. Morgan, *Media Culture and the Public Memory of the Black Panther Party*, in IN SEARCH OF THE BLACK PANTHER PARTY: NEW PERSPECTIVES ON A REVOLUTIONARY MOVEMENT 324, 330, 366 n.38 (Jama Lazerow & Yohuru Williams eds., 2006) (discussing the Black Panther's "Serve the People" program).

⁴⁸ See James Smethurst, *Malcolm X and the Black Arts Movement*, in THE CAMBRIDGE COMPANION TO MALCOLM X 78, 86 (Robert E. Terrill ed., 2010) (discussing the Organization of Afro-American Unity's "Statement of Basic Aims").

⁴⁹ See Brad Hudson, *TWC Offers Alternative Spring Course*, HARV. L. REC., Jan. 21, 1983, at 1 (describing the course sponsored by the Third World Coalition as an alternative to the Racial Discrimination and Civil Rights course being boycotted by the coalition).

inside alternative academies for years.⁵⁰ Art and performance collectives, Black newspapers and radio programs, fair housing councils, trade union caucuses, municipal human rights commissions, and nationalist political organizations functioned as sites where lessons learned from struggle were preserved, analyzed, and critiqued. Sociologist Verta Taylor argues that these institutions are especially important in times of defeat and quiescence because they hold militancy and tools of struggle in “abeyance” for the time when they can be productively and successfully redeployed.⁵¹ In the wake of the revanchist counter-revolution against the freedom struggle in the 1970s, ethnic studies departments in universities and colleges across the country functioned as abeyance mechanisms, as repositories of collective memory, as sites for moral and political instruction, and as generators of oppositional epistemologies and ontologies.⁵² Many of the activists who helped create CRT drew upon their experiences with these kinds of sites, but their ideas and aspirations did not cohere into a unified trajectory until their experiences of concrete struggle generated the organizational learning that led to the formation of the field.

As Crenshaw explains, Derrick Bell’s departure left the law school at Harvard with only one remaining minority professor and no courses on constitutional law and minority issues.⁵³ The activists agitating the institution to hire more teachers of color in 1982 did not accept the justifications administrators offered for the school’s hiring record,⁵⁴ but initially they lacked the critical vocabulary they needed to express exactly what they felt was wrong about the adversary’s position. They did not yet see that administrators viewed the core mission of the law school very differently than they did.⁵⁵ They were not yet aware that they were living in what Crenshaw would later call “the Age of Repudiation,”—an era where a revanchist counter-revolution in law was attempting to constrain, contain, minimize, insulate, and narrow the democratic advances of the 1960s and 1970s. They did not yet know that the dominant understanding of civil rights law exempted from examination and remediation virtually the totality of practices and processes that gave race its oppressive social meaning. But they would soon learn, and oddly enough, it was their

⁵⁰ See generally NIKHIL PAL SINGH, *BLACK IS A COUNTRY: RACE AND THE UNFINISHED STRUGGLE FOR DEMOCRACY* (2005); ROBERT FARRIS THOMPSON, *THE FLASH OF THE SPIRIT: AFRICAN AND AFRO-AMERICAN ART AND PHILOSOPHY* (1984).

⁵¹ Verta Taylor, *Social Movement Continuity: The Women’s Movement in Abeyance*, 54 AM. SOC. REV. 761, 761–62 (1989).

⁵² Ramon Gutierrez, *Ethnic Studies: Its Evolution in American Colleges and Universities*, in *MULTICULTURALISM: A CRITICAL READER* 157 (David Theo Goldberg ed., 1994).

⁵³ Crenshaw, *supra* note 3, at 1265.

⁵⁴ *Id.* (citing Abby D. Phillip, *Race Sparked HLS Tension*, HARV. CRIMSON, June 1, 2008, available at <http://www.thecrimson.com/article.aspx?ref=523668>) (describing the BLSA’s intent to protest Harvard’s response to the lack of diversity in the faculty).

⁵⁵ See *id.* at 1266 (stating that Harvard Law School did not view the constitutional law and minority issues course as part of the core mission of the school).

adversaries who would help them do so. Like the residents of Montgomery, the students in Greensboro, and the would-be voters in Ruleville, stubborn opposition, insults, and repression by their enemies inadvertently helped them hone and refine their ideas and arguments.

The members of the Third World Coalition at Harvard had every reason to expect that Dean James Vorenberg would be receptive to their desire for more faculty members capable of helping them forge careers as social justice advocates.⁵⁶ Harvard seemed like a liberal institution. It had recruited them and offered them admission. Minority enrollment in the school—in the five years before the protest—fluctuated between thirteen and fourteen percent, giving the school a better record on diversity than its peer institutions.⁵⁷ The Dean himself had a long history of service on the Board of Directors of the NAACP Legal Defense Fund. To their surprise, however, the Dean told the students that the subject of constitutional law and minority issues was not a significant area of study, and that in any case, there were no candidates of color available who were qualified to teach at Harvard.⁵⁸ Using the characteristic Socratic Method of legal education, Vorenberg asked the students to explain exactly what they expected to learn in a course on constitutional law and race,⁵⁹ apparently not cognizant of the fact that if they could answer that question fully in advance they would not need the course in the first place. The Dean's closing question punctuated the discussion appropriately: "[W]ouldn't you clearly prefer an excellent white professor over a mediocre Black one?"⁶⁰

The Dean's seemingly innocent question unleashed a whirlwind. His *a priori* assumption that any Black candidate would be mediocre (not to mention that all white candidates would be excellent) made it clear to the students what they were up against. If the Dean had simply agreed to help the students search for an appropriate candidate, CRT might never have come into existence. By the same token, if Fannie Lou Hamer's boss had refrained from telling her he did not want to register to vote, the franchise in Mississippi might still be denied to Blacks to this day. If the manager of the Woolworth's lunch counter in Greensboro, North Carolina had simply served the coffee and doughnuts that the four North Carolina A&T

⁵⁶ *Id.* at 1268–69.

⁵⁷ *Id.* at 1269 (citing A.B.A., SEC. OF LEGAL EDUC. AND ADMISSIONS, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES—FALL 1978 (1979); A.B.A., SEC. OF LEGAL EDUC. AND ADMISSIONS, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES—FALL 1979 (1980); A.B.A., SEC. OF LEGAL EDUC. AND ADMISSIONS, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES—1980–81 (1981); A.B.A., SEC. OF LEGAL EDUC. AND ADMISSIONS, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES—1981–82 (1982); A.B.A., SEC. OF LEGAL EDUC. AND ADMISSIONS, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES—FALL 1982 (1983)).

⁵⁸ *Id.* at 1268 (citing Phillip, *supra* note 54 (describing Dean Vorenberg's insistence that it was difficult to find qualified minority scholars who should be granted tenure)).

⁵⁹ *Id.* at 1267.

⁶⁰ *Id.*

students ordered on February 1, 1960, Jim Crow segregation might still be in place. But these events turned out the way they did because they were flashpoints for organizational learning, transformational moments when established ideas and practices lost their legitimacy.

The Harvard students recognized that Dean Vorenberg's response to their demands encapsulated and emblemized things that were wrong in the law school. Precisely because Harvard was a liberal institution and the students were not confronting the crude white supremacy used to defend Jim Crow segregation in the South it was clear the opposition they faced stemmed from power not from prejudice, that it was a matter of ideology and epistemology not intolerance. It was the core assumptions and premises of the institution that led its administrators to treat unacceptable and unjust racist realities as a decent and legitimate baseline norm reflecting natural, necessary, and inevitable inequalities.

The students moved quickly to turn hegemony on its head, to use their disappointment as an impetus for collective education, agitation, and mobilization. They marched through the institution, literally and figuratively.⁶¹ In keeping with the things they had learned from the freedom movement, they disrupted business as usual and transgressed accepted norms of propriety. They defied the "Quiet" signs in the library with chants and hand clapping.⁶² Wearing t-shirts that proclaimed "Desegregate Now!," they occupied the library and marched into the Dean's office.⁶³ Some of them stood on top of his desk.⁶⁴ Their protests attracted media attention that broadcast their concerns to a wider audience outside the university.⁶⁵ At first, it seemed as if the protests were futile. The law school hired ten new white male faculty members in the midst of the controversy.⁶⁶ Rather than reinstating the course on constitutional law and minority issues, the administration proposed an insulting "compromise," offering a three-week mini-course on civil rights litigation to be taught by two visiting veteran litigators.⁶⁷ Had this proposal been made by the Dean at the outset of the controversy, it might have been accepted.⁶⁸ Yet the process of organizational learning had by now changed the students and sharpened their perspective.⁶⁹ The compromise did

⁶¹ *Id.* at 1267–68.

⁶² *Id.* at 1268.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See *id.* at 1270–71 (noting that the students' protests were broadcast nationwide after Dean Vorenberg distributed a letter from the BLSA explaining its intent to boycott the course taught by Chambers and Greenberg).

⁶⁶ *Id.* at 1269–70.

⁶⁷ *Id.* at 1270.

⁶⁸ *Id.* at 1271.

⁶⁹ *Id.*

nothing to desegregate the permanent faculty,⁷⁰ but even more importantly, the students now realized that one course on civil rights litigation left untouched the question of how law helped constitute the structures and processes that antidiscrimination law was charged with regulating. Resistance to their original demands had exposed a previously occluded logic informing Harvard's hiring practices—what Crenshaw describes as “how conceptions such as colorblind merit operated to obscure the continuing patterns of racial power in presumptively race neutral institutions.”⁷¹ Like Dr. King, the students now viewed their problems as systemic rather than superficial—recognizing “that radical reconstruction of society itself [was] the real issue to be faced.”⁷²

Turning hegemony on its head necessitates transforming disadvantage into advantage. Uninterested in the administration's “compromise” offer of a course on civil rights litigation, the students instead decided to create a parallel institution: the Alternative Course.⁷³ Drawing on powerful traditions of self-activity and self-help in the movement, the Third World Coalition pooled resources to run the very course that Harvard would not offer them.⁷⁴ Like the Freedom Vote that the Mississippi Freedom Democratic Party staged in that state in 1964,⁷⁵ the Alternative Course both mocked and shamed opponents by implementing unofficially what those in power refused to do officially. Working by and for themselves, the students found what Dean Vorenberg told them did not exist: a body of legal research authored by expert scholars that could serve as the basis for the sustained and productive critique of racial domination and for successful interventions against it.⁷⁶ The Alternative Course used Derrick Bell's course book, *Race, Racism and American Law* as its core text and invited scholars of color from different races to each teach a chapter, and to share their experience and perspectives with the students.⁷⁷ The visitors' presence on campus gave an embodied quality to the ideas being embargoed by Harvard's priorities and hiring policies.

Action brought results. The purpose of direct action is not necessarily to persuade opponents but to change the balance of power by turning

⁷⁰ *Id.* at 1266–67.

⁷¹ *Id.* at 1277.

⁷² Martin Luther King, Jr., *A Testament of Hope*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 313, 315 (James Melvin Washington ed., 1986).

⁷³ Crenshaw, *supra* note 3, at 1277–81.

⁷⁴ *Id.* at 1280 (describing the Third World Coalition's “pool[ing] of resources to invite those purportedly non-existent minority scholars”).

⁷⁵ See Catherine T. Struve, *Direct and Collateral Federal Court Review of the Adequacy of State Procedural Rules*, 103 COLUM. L. REV. 243, 276 (2003) (describing how the Freedom Vote was a mock election of African Americans to the Democratic National Convention to contest the all-white Mississippi delegation).

⁷⁶ Crenshaw, *supra* note 3, at 1280–82.

⁷⁷ *Id.* at 1282.

bystanders into upstanders. As the first institutionalized manifestation of CRT, the Alternative Course exploited contradictions inside the law school. The Third World Coalition received moral and material support from sympathetic members on the Harvard faculty and from colleagues at other institutions in the still mostly white profession.⁷⁸ The course transformed scholarship by demonstrating the generative nature of critiques of dominant legal discourse, especially showing that legal scholarship could not have a beneficial effect “out there” in society if it remained riddled with unjust premises and practices “in here” inside the law school. Perhaps most important, in conjunction with other parts of the long march through the institutions enacted by advocates of social justice, the Alternative Course and CRT demonstrated that even in institutions where people of color may not be present or well represented, racial power still does detrimental and even deadly work.

Part of the project of CRT entailed the creation of a counter-culture inside the law. Informal associations and affiliations forged through conversations in what Crenshaw describes as “backdoor speakeasies” at conferences provided alienated anti-racist professionals with reality checks and confirmation that their frustrations were shared by others.⁷⁹ Individuals whose home institutions might lack the critical mass necessary for sustained and sophisticated work on race came to conferences looking for people who were looking for them.⁸⁰ The contacts made at these meetings helped establish the infrastructure of a personal and professional support network whose members gave each other hope and heart. Crenshaw’s account reveals the boldness and audacity of the personalities shaped by these projects—people who could name their *first* conference “New Developments in CRT” as if there had been a long history of *old* developments.⁸¹ This kind of mischievous humor is a frequent feature of political struggle by aggrieved groups. Shared laughter helps uncrown power, minimizes fear, and builds bonds of mutual enjoyment, admiration, and trust. A culture of solidarity imbues people with confidence. It transforms them from supplicants pleading for justice into people who act as if they are already building a new society inside the shell of the old. Gramsci observes that this kind of confidence is contagious and that it performs important political work. He asserts, “[a] new social group that enters history with a hegemonic attitude, with a self-confidence which it initially did not have, cannot but stir up from deep within it personalities who would not previously have found sufficient strength to express

⁷⁸ *Id.* at 1280–82.

⁷⁹ *Id.* at 1263.

⁸⁰ *See id.* (“The group might be described as a intellectual nomads, folks who were attracted to both liberal antidiscrimination and Critical Legal Theory discourses at a time when the two traditions were connected only at the margins.”).

⁸¹ *Id.* at 1263 (emphasis added).

themselves fully in a particular direction.”⁸²

As is so often the case in response to asymmetrical power, the students *felt* something was wrong before they *knew* what it was and why. The booklet explaining the Alternative Course expressed that feeling via a mytho-poetic image on the cover, a drawing depicting Harvard law professors moving bookshelves and desks against the doors of the school to barricade themselves in against people of color pushing from outside the doors in an attempt to enter the school.⁸³ This image echoed the politics of another image that meant a great deal to the students. Derrick Bell’s book included an unexplained photograph—an image of the protest staged by sprinters Tommy Smith and John Carlos at the 1968 Olympics.⁸⁴ During the awards ceremony when the national anthem was played, the two medal winners held their fists in the air in the Black Power salute and looked down at the ground instead of at the flag.⁸⁵ As Crenshaw and her co-authors later explained,

To those of us who were then law students and beginning law teachers, Bell’s inclusion of the Smith-Carlos photograph as a visual introduction to his law school casebook suggested a link between his work and the Black Power movements that most of us ‘really’ identified with, whose political insights and aspirations went far beyond what could be articulated in the reigning language of the legal profession and the legal studies we were pursuing.⁸⁶

Because of their talent, hard work, and good fortune, Smith and Carlos put themselves in position for enviable reward recognition. The eyes of the world were focused on them on that day. Rather than bask in the glory of the moment for themselves, they chose instead to use their celebrity status as a platform for associating their fame with the insurgent hopes and freedom dreams of their oppressed and exploited community. For law students and professors whose own talent, hard work, and good fortune placed them in positions of prestige inside elite institutions, the Smith-Carlos picture provided an example to follow of individuals who did not let their personal success blind them to the systematic exclusions and

⁸² MICHAEL DENNING, *THE CULTURAL FRONT: THE LABORING OF AMERICAN CULTURE IN THE TWENTIETH CENTURY* 135 (1996) (quoting Gramsci).

⁸³ Crenshaw, *supra* note 3, at 1282 n.94.

⁸⁴ DERRICK A. BELL, JR., *RACE, RACISM, AND AMERICAN LAW* (5th ed. 2004).

⁸⁵ See Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or “A Foot in the Closing Door,”* 49 *UCLA L. REV.* 1343, 1345–46 (2002) (discussing the image of Smith and Carlos and the criticism that followed from their act).

⁸⁶ *Introduction to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, at xiii, xx (Kimberlé Crenshaw et al. eds., 1995) [hereinafter *CRITICAL RACE THEORY: THE KEY WRITINGS*].

injustices of their society.⁸⁷ Like Smith and Carlos, they recognized that outside the Olympics in the broader arenas of U.S. society, Blacks did not have an equal place at the starting blocks and were compelled to race in lanes littered with obstacles and pitfalls. Instead, they saw parallels between the quiet color bound insistence by Smith and Carlos that the U.S. nation was suffused with racial projects and hierarchies and Bell's determination to place race at the center of his legal analyses and critiques.⁸⁸ In confronting the systematic biases built into legal education and the law itself, the Third World Coalition gradually began to see that prevailing understandings of law were more a part of the problem than a part of the solution to the problems posed by white supremacy.⁸⁹

By imagining that the Civil Rights Acts of 1964,⁹⁰ 1965,⁹¹ and 1968⁹² had solved the race problem once and for all, the liberals in the law school confused the concessions made to the Black freedom movement with the totality of its goals. They inhabited the worldview of those in power who succeeded in containing, constraining, and confining broad-based demands for freedom to the narrow rights to use public accommodations and to vote. These were important victories, but the 1964 and 1965 Civil Rights Acts merely sought to make more secure rights that had already been "granted" by the 1866 Civil Rights Act,⁹³ the Fourteenth and Fifteenth Amendments to the United States Constitution,⁹⁴ and Supreme Court rulings about interstate commerce.⁹⁵ These laws (including the 1968 Fair Housing Act) were strongest in granting Blacks the "rights" that were most valuable to

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Crenshaw, *supra* note 3, at 1277 (discussing Third World Coalition led protests against faculty racial disparity, and the emerging realization that the logic underlying a "merit" based faculty "helped to sharpen the awareness of how conceptions such as colorblind merit operated to obscure the continuing patterns of racial power in presumptively race neutral institutions").

⁹⁰ Civil Rights Act of 1964, 42 U.S.C. § 2000a et seq. (2006).

⁹¹ Voting Rights Act of 1965, 42 U.S.C. §§ 1971, 1973–1973bb-1 (2006).

⁹² Civil Rights Act of 1968, 42 U.S.C. § 3601 et seq. (2006).

⁹³ See Civil Rights Act of 1866, Ch. 31, 14 Stat. 27 (codified as amended at 42 U.S.C. § 1981 et seq. (2006)) ("All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . .").

⁹⁴ See U.S. CONST. amend. XIV, § 1 (providing that all persons born in the United States were citizens of the United States and of the state in which they resided and that "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"); U.S. CONST. amend. XV, § 1 (providing that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude").

⁹⁵ See, e.g., *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 261 (1964) (holding that the public accommodations provisions of the Civil Rights Act of 1964 were valid under the Commerce Clause); *Katzenbach v. McClung*, 379 U.S. 294, 300 (1964) (holding that Congress had an ample basis upon which to find that racial discrimination at restaurants which received a substantial portion of food served from out of state had a direct and adverse effect on interstate commerce).

whites: shopping in white-owned stores and voting for white candidates. They were weakest in the things most valuable to Blacks: jobs, housing, education, and wealth. The 1964 Act tacitly condoned resistance to *Brown v. Board of Education*⁹⁶ by offering financial incentives to school districts willing to obey the decision's mandates some ten years after it was supposed to have been established as the law of the land.⁹⁷ The Civil Rights Acts did not so much ban racial discrimination as provide people doing the discriminating with a manual for doing so effectively and efficiently. As Scott Burris contends, the weaknesses written into civil rights laws and the failure to implement the provisions that might do some good actually produced "a white-oriented system that regulates discrimination" rather than preventing it.⁹⁸

While CRT scholars recognized the limits of the rights perspective embedded in civil rights laws, they found that they did not want to abandon entirely the emancipatory legacies and useful tools of Abolition Democracy.⁹⁹ This distinguished them from their sometimes-allies and sometimes-antagonists in Critical Legal Studies ("CLS").¹⁰⁰ CLS shared CRT's commitment to political work inside dominant institutions, but its stances on law and race as social constructions that reified the very categories that needed deconstruction clashed with the situated knowledge of most CRT activists as people of color who confronted the power of race and law in their lives every day.¹⁰¹ Disagreements with CLS helped CRT develop a both/and rather than an either/or position toward the rhetoric of rights. Like Malcolm X, they believed that when people are "fighting for their freedom, there is no such thing as a bad device."¹⁰² Conflicts between CLS and CRT helped both groups by highlighting questions unasked and problems unsolved, by compelling adherents of both positions to write

⁹⁶ 347 U.S. 483 (1954).

⁹⁷ See Bradley W. Joondeph, *Missouri v. Jenkins and the De Facto Abandonment of Court-Enforced Desegregation*, 71 WASH. L. REV. 597, 605–06 (1996) ("Because Title VI of the Civil Rights Act forbid racial discrimination by entities receiving federal funds, the Department of Health, Education, and Welfare (HEW) could make the disbursement of these funds contingent on school districts' abandonment of segregation. Gradually, this financial incentive to desegregate . . . , coupled with the Justice Department's active involvement in desegregation litigation, caused many school systems to abandon their de jure policies and desegregate their schools.").

⁹⁸ Scott Burris et al., *Integrating Law and Social Epidemiology*, 30 J.L. MED. & ETHICS 510, 517 (2002).

⁹⁹ See DU BOIS, *supra* note 29, at 184 ("The abolition-democracy was the liberal movement among both laborers and small capitalist, who united in the American Assumption, but saw the danger of slavery to both capital and labor.").

¹⁰⁰ See Rachel F. Moran, *What Counts as Knowledge? A Reflection on Race, Social Science, and the Law*, 44 LAW & SOC'Y REV. 515, 522 (2010) ("The Critical Legal Studies movement questioned the notion that law should be the object of social science inquiry, the dependent variable, rather than an autonomous field with an independent and powerful influence of its own.").

¹⁰¹ *Id.*

¹⁰² PETER GURALNICK, *DREAM BOOGIE: THE TRIUMPH OF SAM COOKE* 537 (2005) (quoting Malcolm X).

with and to specific people to have their ideas vetted by people with diverse backgrounds and perspectives.¹⁰³ Political contestation made this scholarship better because it compelled individual researchers to reckon with the relationships between their ideas and the struggles of large groups of people.¹⁰⁴ CRT's involvement in this broader force field has been even more significant than its key canonical arguments and theories. Intellectual movements do not exist in a vacuum; they do not battle for supremacy until one becomes recognized universally as true. Instead, they work together in concert as parts of a reticulated web. Democratic and egalitarian thinkers are always looking for people who are looking for them. Their *métier* is dialogue rather than monologue. They fight fiercely for their beliefs, trusting that impassioned dialogue and debate will lead not to victory for themselves but clearer and better theorized understanding for everyone.

In Crenshaw's compelling and convincing argument about how the freedom project is now imperiled by the race to the post-racial paradigm that pervades the present moment, she positions the history of CRT as a memory that flashes up in a moment of danger, as a part of the past that speaks powerfully to the present because it locates clearly and precisely the crossroads that we now confront.¹⁰⁵ Because of CRT's origins and evolution as a social movement steeped in organizational learning, its history as a parallel institution contesting for power in the spaces that universities tolerate but do not fully approve, and its strategic utility as the locus of collective memory of a racial history that the dominant institutions in society want people to forget, CRT is presently positioned to do important work in the world. The people who run this society cannot fix the things they have broken. Decades of reactionary and regressive policies have ruined the economy, the environment, and the educational system. Society's failure to reckon with the role of racism in preserving unjust hierarchies, misallocating resources and responsibilities, and channeling unearned advantages, unfair gains and unjust enrichments to undeserving recipients has produced what surely must be the most resentful, surly, and belligerent group of "haves" in the history of the world. They are creating a world of economic and educational inequality,

¹⁰³ See, e.g., Harlon L. Dalton, *The Clouded Prism: Minority Critique of the Critical Legal Movement*, in *CRITICAL RACE THEORY: THE KEY WRITINGS*, *supra* note 86, at 80–82 (discussing various difficulties that minority groups have with CLS).

¹⁰⁴ See, e.g., Kimberlé Williams Crenshaw, *Race Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, in *CRITICAL RACE THEORY: THE KEY WRITINGS*, *supra* note 86, at 112 (responding to CLS's failure to account for the full importance race-consciousness, a central CRT idea, in "the domination of blacks [and] also to whites' acceptance of the legitimacy of hierarchy and their identity with elite interest").

¹⁰⁵ See Crenshaw, *supra* note 3, at 1309–10 (noting that the conditions that made CRT possible do not guarantee its survival because CRT still finds itself in the midst of a powerful conservative backlash).

mass incarceration, and social disintegration that will inevitably take on openly racist dimensions. The emerging equation of power makes it likely that even the people who are presented as leaders will actually be enemies, people who in Crenshaw's words will at best transform the "racial justice offense" into status quo defense.¹⁰⁶ Under these conditions, the social movement history of CRT has much to teach.

Martin Luther King, Jr. encouraged his followers not to be thermometers who just register the temperature around them, but instead to be thermostats who turn up the heat or cool things down as needed.¹⁰⁷ The social movement history of CRT tells us that struggle is generative and productive, that organizational learning changes both people and social structures, that deliberative talk and face-to-face decision-making make a difference. Yet it is often difficult for academics to imagine themselves as activists. We are more comfortable with ideas, evidence, arguments, and opinions than with action. The relentless segregation of society systematically separates us from the social groups with whom we most need to be in touch. Yet all across this nation and all across this world, people are standing up and stepping up and speaking up. They are looking for us and we need to be looking for them. Crenshaw's history of CRT, and the history of struggle by freedom loving people all around the world that made that history possible, equip us with everything we need for the fight, if only we can learn to read our situation in the right way and act accordingly. But the changes we need to make are not small ones, and we cannot make them by ourselves. As Martin Luther King, Jr. explained more than four decades ago, "No great victories are won in a war for the transformation of a whole people without total participation. Less than this will not create a new society: it will only evoke more sophisticated token amelioration."¹⁰⁸

¹⁰⁶ *Id.* at 1262.

¹⁰⁷ See Martin Luther King, Jr., *Letter from Birmingham Jail*, in 212 THE ATLANTIC MONTHLY 1, 5 (June 12, 1963), available at http://web.cn.edu/kwheeler/documents/Letter_Birmingham_Jail.pdf ("In those days the church was not merely a thermometer that recorded the ideas and principle of popular opinion; it was thermostat that transformed the mores of society.").

¹⁰⁸ Martin Luther King, Jr., *Where Do We Go from Here: Chaos or Community?*, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 555, 567-68 (James Melvin Washington ed., 1986).